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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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ORACLE CORPORATION,

Plaintiff,

v. 18 Civ. 3440 (GHW)

CHARTIS SPECIALTY INSURANCE COMPANY,

Defendant. Conference

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New York, N.Y.
June 26, 2018
3:41 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

McKOOL SMITH, PC
Attorneys for Plaintiff
BY: ADAM S. ZIFFER, ESQ.
ROBIN COHEN, ESQ.

BRESSLER, AMERY & ROSS, P.C.
Attorneys for Defendant
BY: ROBERT NOVACK, ESQ.
MICHAEL D. MARGULIES, ESQ.

(Case called)

THE DEPUTY CLERK: Counsel, please state your names for the record.

MR. ZIFFER: On behalf of the plaintiff, Adam Ziffer.

MS. COHEN: Good afternoon, your Honor. Robin Cohen on behalf of the plaintiff.

THE COURT: Thank you. Good afternoon.

MR. NOVACK: Robert Novack on behalf of the defendant.

MR. MARGULIES: Michael Margulies for the defendant.

THE COURT: Good. Thank you very much. Good afternoon.

So we're here for an initial pretrial conference with respect to this case. My agenda for the conference follows:

First, I'm going to give each of the parties the opportunity to describe any legal or factual issues that you'd like to bring to my attention in connection with the case. We've already discussed the case, and I've reviewed the materials that have been submitted on the docket to date, with the exception of the answer. Still, I look forward to hearing from you with respect to any issues that you'd like to highlight for me during this conference.

Second, I hope to discuss the process that we'll be using to litigate the case going forward. For that purpose, I expect to look to the proposed case management plan and scheduling order that the parties have submitted as the

framework for that conversation.

And last, I hope to discuss what I can do to help the parties facilitate a resolution of the case, in particular the prospect of a reference to the assigned magistrate judge as soon as practicable.

Good. So that's my agenda. Is there anything that either set of parties would like to add to that agenda before we proceed?

MR. ZIFFER: Not from the plaintiffs, your Honor.

THE COURT: Thank you.

Counsel?

MR. NOVACK: No, your Honor.

THE COURT: Good. Thank you.

Counsel for plaintiff, what would you like to tell me about the case?

MR. ZIFFER: Well, briefly, your Honor, this is a case where Oracle is seeking insurance coverage under an insurance policy that was written to cover allegations that in the course of its provision of professional services, there were errors or omissions. Oracle was contracted with the State of Oregon to put together their health information exchange, the Obamacare equivalent but at the state level, and they worked on a project for a number of years and then, for a variety of reasons, it blew up as it was approaching launch. There was some significant discourse between state and Oracle with respect to

how to manage the deterioration of the relationship, and at some point during that process, a tolling agreement was exchanged and Oracle put its insurance company -- there was a tower of insurance -- on notice of a potential claim at that time. Ultimately the state of Oregon issued a civil investigation demand, Oracle continued to try to settle its dispute with the state of Oregon, but at some point in time I believe it was the Oregon attorney general made a speech and informed the public that it was being directed by the governor to sue Oracle on the contract.

In an effort to defend against the ripening claim, Oracle filed the lawsuit to try to secure a federal forum. It sued for breach of contract and I think eventually also for copyright infringement in federal court. It was the equivalent of an effort to plant the flag in a federal case where it thought it would get a better shot than in Oregon state court.

Less than two weeks later, the state of Oregon filed what we refer to as the main case in Oregon state court against Oracle and brought a number of causes of action, about 13. I'm not going to go into them in detail because we discussed them with your Honor previously during the premotion conference, claims ranging from breach of contract to fraud and RICO. There were another five lawsuits that were filed that we refer to in our complaint, and the five lawsuits, I think one was brought by the state of Oregon for an injunction, four others

were brought by Oracle. This was a massive litigation that was focused on the state of Oregon's claim for approximately $7 billion for the failure of the healthcare system that Oracle designed for the state of Oregon.

Eventually these cases settled. And they all settled at once. There was a significant negotiation, and I also won't go into what we've discussed previously about the carrier's appraisement or involvement in the details of the settlement and the facts leading up to it. What we're here about are the costs of defense fees, which were in the range of [redacted] to $[redacted]. There were a number of firms. All of the invoices in negotiations had been provided to the defendant here. And there is also $35 million that is the value of the settlement. 25 million was paid for Oregon's legal fees and $10 million was paid by Oregon for stem funding.

So what happened was, there's a $[redacted] self-insured retention or deductible. So the first [redacted] of the over $[redacted] in loss goes there. Then comes Beazley, which is an insurance company, the primary insurance company, and its policy limit was for $[redacted]. There was some exchange between Oracle and Beazley, and ultimately Beazley paid its $[redacted] in full.

Next up is the defendant here that I'll refer to as AIG. The Oracle looked to AIG to pay. There were over the limits still remaining in the amounts that Oracle paid to its

lawyers, claims expenses, as that's defined under the policy, in addition to the $35 million of the indemnity spend or the settlement amount. The position that AIG took was that it was not going to acknowledge that there was coverage for a couple of components of the claims expenses. One of those components was the amount that was spent in the main case to defend the Oregon False Claims Act, and I believe it's going to be a motion for judgment on the pleadings. We've looked at that, and we anticipate it's going to take that form.

Additionally, AIG took the position that the funds that Oracle spent in pursuing the affirmative lawsuits -- the federal court action, there was another action against some political supporters of the governor who they alleged had an agenda to blow up the contract with Oracle, there was another litigation that Oregon filed against the governor to produce documents that were going to be used in connection with its defense of the underlying claim, and there was also a writ of mandamus that Oracle filed in DC federal court to try to upend the Oregon state proceeding. So AIG has taken the position that its policy does not cover amounts that were spent in pursuit of these affirmative claims.

THE COURT: I'm sorry. This is not core to the issues that are presented here, but what was the basis for the mandamus action?

MR. ZIFFER: I believe the position that Oracle took

was that the state lacked standing to attack the contract or the damages. I'm not sure the details of it.

THE COURT: That's fine. Please proceed.

MR. ZIFFER: Sure. But it was part of a concerted and coordinated defensive effort.

So our position is that the language of the policies in the insuring agreement which says that this policy covers claims expenses which the insured -- that's Oracle -- is legally obligated to pay because of any claim, and when we eventually approach your Honor or the jury with the question of whether or not all of its claims expenses are covered, we'll focus on that language, that even the affirmative suits, the claims expenses incurred in connection with them were because of the claim against Oracle. In addition, the definition --

THE COURT: Sorry. You say "because of." The language that you just read said "legally obligated to pay because of." What's the basis of the contention that Oracle is legally obligated to take on those claims?

MR. ZIFFER: Claims expenses. No different than any other claim expense, that essentially you contract with lawyers to defend a claim, and that generates the legal obligation to pay those claims. AIG has not taken the position that there's no legal obligation with respect to the claims expenses but rather that those claims expenses were not in defense of a claim, and that is language that appears elsewhere in the

policy. To counter their position that the claims expenses incurred in connection with the affirmative suits were not in defense of a claim, we'll point to this language that says that claims expenses are covered if they are because of any claim. And that's in the insuring agreement.

THE COURT: Thank you.

And the words are "because of any claim," "not legally obligated to pay because of any claim"?

MR. ZIFFER: I'll read it in total. That they agree, and now I'm quoting, "to pay on behalf of any insured damages and claims expenses in excess of each claimed deductible, which the insured shall become legally obligated to pay because of any claim."

And Oracle will show how the words "because of any claim" in that phrase are broader than only those claims expenses that they would be legally obligated to pay in defense of a claim.

In addition --

THE COURT: I'm sorry. Let me just take a step back.

MR. ZIFFER: Sure.

THE COURT: The "legally obligated" in your view refers specifically to the contractual obligation between Oracle and its counsel; it's not a reference to whether or not this is a mandatory counterclaim or something that they're legally obligated to pursue in connection with the litigation?

MR. ZIFFER: That's correct. Typically the words "legally obligated" are focused on in the context of damages, and often the litigation around that language in an insurance policy has to do with whether or not there really was liability for a particular claim. I haven't seen it litigated in the context of the claims expenses, and again, it's not something that AIG has raised, the phrase "legally obligated" is a basis to avoid the claims expenses.

THE COURT: Thank you for the education. Please proceed.

MR. ZIFFER: In addition, the definition of "claims expenses" has a number of components to it, and one of them is particularly expansive. Sorry, your Honor. I'm looking for it.

So "claims expenses" means, and definition 2 is "all other fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a claim, suit, or proceeding arising in connection therewith." So we will rely on that expansive definition of "claims expenses" to further support the proposition that the claims expenses incurred in connection with the affirmative claims are covered.

THE COURT: Thank you. And with reference to the "arising in connection therewith" language, which you argue is broader.

MR. ZIFFER: Than just in defense of a claim. Yes.

THE COURT: Understood.

Anything else that you'd like to tell me?

MR. ZIFFER: Only the point that to the extent that the $35 million settlement value is covered, we exhaust the limits of the AIG policy [redacted], without getting into the question of whether or not portions of the defense costs are covered, and with respect to that question, of course this policy follows form to the Beazley policy, the primary policy that paid its full limits. And to the extent that I didn't mention it, and I don't think I did, what I was quoting from was actually the primary Beazley policy to which the AIG policy follows form. That's what the case is about.

You know, the consent to settle issue we've discussed before. This allocation point will be the other one. Counsel and I have -- our firms and us individually have had a number of cases together, so I anticipate that we're going to really be able to focus in on these issues in dispute and do it in an efficient way, as we've done historically.

THE COURT: Good. Thank you. I appreciate that.

Counsel for defendant.

MR. NOVACK: Good afternoon, your Honor.

I think Mr. Ziffer gave a fairly good description of what the case is about.

I guess the three main issues here are whether or not these affirmative claims are covered at all under the primary

policy. The language your Honor has pointed to, as well as other language in the policy, in our view, and based upon many authorities, which I'm sure we'll bring to your attention at the appropriate time, that these insurance policies do not cover affirmative claims and that the language of the policy does not support what they've indicated here. There are a number of underlying claims that are based upon fraud or other intentional misconduct which we believe are not covered. This is a professional liability policy. The language of the insuring clause talks about negligent acts or unintentional acts. It's not intended to cover intentional fraud or claims of that sort.

The issue with respect to the indemnity claim, which we believe was waived by not seeking consent of the insured prior to making a settlement arrangement with the plaintiffs, I think probably as we indicated in our conference call with the Court, will likely resolve as a matter of law whether or not the indemnity claim is even covered. If the indemnity claim is covered, the case will have a different complexion, and I think that's one of the reasons both sides would like to get it resolved early on.

With respect to the defense costs, while there were approximately [redacted] or $[redacted] in fees, we're still looking at invoices, quite a bit of them, quite a few of them. One of AIG's contentions has been that Beazley, who was the

underlying primary carrier, was going to exhaust its limits regardless of whether or not affirmative claims were covered, fees of law firms for affirmative claims were covered, was going to exhaust its limits with respect to defense costs, even if you were to cut this $[redacted] of fees in half. Our position is that our policy limits will not be triggered or reached because many of the claims with respect to defense costs are not covered at all in the first instance, and even if they were covered, we believe we would be able to establish that the fees are, on their face, either not covered because of the nature of the claims or because of the failure to cooperate with the insurers to keep accurate and appropriate records with respect to where monies were spent. I don't want to get too deep into the weeds, but there are -- I think it's approximately $[redacted] in fees. Much of it is block billing with no indication on which of the seven or eight matters they were handling they were billing time to. Issues like that, which are likely to be the subject of expert testimony at some point.

So I think the initial applications that both sides would bring, which the Court asked us to bring to your attention, probably will go a long way to resolving perhaps the case as a whole or narrowing the issues.

THE COURT: Thank you. Good.

So counsel for plaintiff, can I hear from you

regarding what you anticipate doing with respect to fact and expert discovery in the case. I want to hear both about the substantive issues that you expect to elucidate through discovery and also to get some sense of the scope of discovery that you anticipate taking.

MR. ZIFFER: Sure.

Substantively, the substantive areas, we're going to want to talk with the claims handler at AIG and/or the underwriter about their understanding of some of the policy language that I've mentioned and also that counsel has mentioned. We got their answer yesterday, I believe, and there are, I don't know, maybe ten or so exclusions, most of which we think facially don't apply. So we'd spend some time with a corporate representative working through whether there's any factual support or what the theory is as to why they apply. And those may go away. I hope and expect that they will.

We're going to want to do some more significant drill-down on the questions surrounding the information that was provided during the time of settlement, both before and after, to understand both from the insurance company's side what information they were provided and what kind of decisions they were making and what kind of engagement they were anticipating, and in that regard, we also may want to take some limited third-party discovery, because the insurance broker -- here I believe it was Marsh McLennan -- was working as a

conduit of information between Oracle on the one hand and the insurance companies on the other hand. So that broker will also have information about -- or will have discovery about the information that was provided from Oracle to the insurance companies with respect to the settlement.

Factual discovery, I think that's it, that I can perceive from right now. If one of the exclusions -- I looked at them today. I really don't think that other than what we've mentioned today, these other exclusions are going to present an issue. If something did, we would deal with it. But we think discovery is going to be pretty focused.

Should I comment on expert discovery as well?

THE COURT: Please do.

MR. ZIFFER: Sometimes we find it appropriate to get an expert to weigh in on policy language if we think it's ambiguous or if we think we may be saying the same thing, reasonable differing interpretations thereof. So that's something that we would explore as the case matures.

And then in addition, I heard counsel mention experts about the fees. In some of these cases where the billings and the reasonableness of the billings are called into question, sometimes policyholders will have an expert who can be of real assistance to a fact finder where you have $[redacted] in detailed invoices, which can be substantial to work through them and talk through the nature of law firm billing on a

summary basis and to contest challenges of reasonableness, to the extent that they're made.

THE COURT: Good. Thank you.

Counsel for defendant, I have the same questions for you.

MR. NOVACK: So again, I think Mr. Ziffer has a fair appraisal of what's ahead. I probably take issue with the idea that an underwriter's testimony might be necessary, unless they're alleging that the policy is ambiguous. I think New York or even California law, which I think governs here, absent an ambiguity in the policy, I think it's for the Court to determine whether that facts apply with the policy. But I think that's something we'll probably develop as we get further along, whether they're making that allegation, and I would say in roughly 25 percent of our cases do we need an expert to tell us what the policy is intended to say.

So with respect to a claims handler, that's a common deposition. We're not going to object to it. We also would likely take the depositions of the people in risk management at Oracle or I think in their general counsel's office, whoever the responsible party was who was communicating what was happening in the underlying cases. We've just become familiar with the claims file recently, your Honor, so I can't give you names or titles at this point.

We also, in this particular case, I think would likely

share in the view that the broker who acts as an advocate for Oracle in its communications with the insurer would likely be a fact witness as well. But I'm thinking hopefully something less than a half dozen depositions, perhaps, on each side; hopefully not more than that.

With respect to experts, our common practice where we get $[redacted] in bills dropped on us -- remember we're an excess carrier and a lot of things came to us at the end -- we typically have an expert familiar with the locale where these cases were litigated to give us some advice or opinions with respect to the reasonableness of fees and the types of work that they were doing, and to assist us in trying to allocate the $[redacted] or so in fees among the various underlying actions, which all relate to whether or not they're covered in the first place, in our view.

So I don't think this is a terribly complicated case from the insurer's perspective, and at least at this juncture, hopefully, working cooperatively. I think the only difficult thing for both sides is neither of us know the extent of ESI at this early stage, and that sometimes is something that slows us down a bit, but with respect to scheduling deps and things like that, generally we don't have problems doing that.

THE COURT: Thank you.

With respect to ESI, have the parties conferred yet about custodians and potential search terms?

MR. ZIFFER: We have not, your Honor.

THE COURT: Thank you. I'll encourage you to do that promptly. For reasons that counsel just articulated.

First, I appreciate the fact that the parties have thought carefully about the nature and scope of the discovery that you expect to take. I've reviewed the parties' proposed case management plan and scheduling order, and based on your proffers, I think that the deadlines that you proposed are reasonable. I'd like to suggest a few modifications to the order, however.

First, in paragraph 7A of the case management plan, the parties have suggested that the deadline for service of requests to admit be September 18, 2018. I'd like to propose that we move that to September 14, 2018. The date that's proposed is somewhat shorter than the 30 days permitted for production of responses to requests to admit. I'd like to make sure that you have the opportunity to receive those responses prior to the close of fact discovery. Is that an acceptable modification for plaintiff?

MR. ZIFFER: Yes.

THE COURT: Thank you.

Counsel?

MR. NOVACK: Yes, your Honor.

THE COURT: Good. Thank you.

The second issue that I'd like to discuss is in

paragraph 8C of the case management plan. Here, the deadline for expert discovery is stated in paragraph 8B. It's stated there to be November 30, 2018. The deadline for party opponent disclosures in paragraph 8C, however, is the same date, so I'd like to suggest that the deadlines in paragraph 8C be modified to be October 16 and October 30, 2018, respectively. It may be that that's a typographical error.

What's your position on those proposed changes?

MR. ZIFFER: It was a typographical error. The only question -- and we discussed this -- is whether we wanted a little bit of a gap between the close of fact discovery and the start of expert discovery, to give the experts maybe some room to work with at the very end, so we had discussed November 1 and November 16.

THE COURT: Thank you.

Counsel for defendant, is that acceptable to you?

MR. NOVACK: Yes. That's what we had discussed before we came in, your Honor.

THE COURT: Good. Thank you.

Given a November 16 deadline for production of party opponent expert disclosures, 14 days for completion of expert discovery seems short. Would you like to propose a modification to the deadline in paragraph 8B?

MR. ZIFFER: Sure, your Honor. I think three weeks for expert depositions. The problem is usually the scheduling,

not the doing. Maybe just -- see, I don't want to move the summary judgment date out. Can we try to get it done in two weeks?

MR. NOVACK: We'll undoubtedly have an expert issue because they're difficult, but yeah, we can try it.

MR. ZIFFER: Your Honor, I guess we'd ambitiously try to keep the dates.

THE COURT: Fine. Understood.

So I'll keep the end date for expert discovery at November 30th. I'll modify the deadlines in paragraph 8C to refer to November 1st and November 16th respectively.

I understand that the parties wish to keep the deadline in paragraph 10 for summary judgment motion, which is December 19, 2018. Let me remind you that my rules require the submission of a premotion conference letter prior to submission of the motions for summary judgment. I'll tell you that my usual practice is to schedule the deadline for submission of the motion itself after reviewing that letter such that frequently, the deadline that's contained in paragraph 10 of the case management plan becomes more notional than absolute. That said, if the parties wish to meet that deadline, which has many benefits, I just encourage you to write me promptly with your premotion conference letter so that we can talk about the motion if necessary and so that the parties have no issues meeting the December 19 deadline, but you should be aware that

if during the course of that premotion conference it appears that the parties need more time to file the summary judgment motion, I will frequently entertain that request.

Good. I think that is all of the matters that I wanted to discuss in the case management plan itself. Let me just say a few words about the deadlines here.

I'm sorry. Counsel? Please.

MR. NOVACK: Taking a second look at 8B, maybe December 7th for the expert discovery completion, just a week. Only because experts are difficult to schedule typically, so instead of having 14 days, I would prefer, unless you have --

THE COURT: Thank you.

Counsel?

MR. ZIFFER: No objection.

THE COURT: Thank you. I'll modify paragraph 8B as suggested so that expert discovery will be completed by December 7th.

Do the parties wish to retain the December 19 summary judgment motion deadline?

MR. ZIFFER: Yes, we would.

THE COURT: Thank you.

Counsel for defendant?

MR. NOVACK: That's fine, your Honor.

THE COURT: Thank you. Good.

So just a few words about the case management plan as

a whole.

First, let me just highlight the fact that the deadlines here are real deadlines. Deadlines for completion of fact and expert discovery are deadlines for completion of fact and expert discovery. In other words, I expect that there will be no more discovery of the relevant type after those dates. There are a number of corollaries that flow from that rule. First, if you are unable to resolve a discovery dispute amongst yourselves, please don't hoard it until late in the discovery process or afterwards. You should not expect that I'll add some indefinite amount of time to litigate discovery disputes following the close of fact discovery. Instead, you should bring me a dispute early enough so that I can resolve it and you can get the responsive materials by the close of fact discovery. So the close of fact discovery is not the close of fact discovery and the commencement of fact discovery litigation. It's the close of fact discovery.

Similarly, be mindful that as you're scheduling the conduct of discovery, that if you wait until late in the discovery process to request or take discovery, it will leave you with limited time for follow-up discovery. So for example, if you were to wait until October 16th to take a deposition, you would have no time left for any follow-up discovery with respect to any information that you might learn during the course of that deposition. So you are at liberty to schedule

depositions up to that date in the case management plan. That said, there are ultimate constraints -- namely, the deadlines for completion of fact discovery and, with respect to experts, expert discovery.

With respect to expert discovery, we have already talked about the deadlines in paragraph 8C. I just want to emphasize the deadline for disclosures under that paragraph. If you fail to provide all of the disclosures required under the rule for any expert by the date specified, you should not expect that your expert will be permitted to provide testimony or other evidence in the case. Now remember that the disclosures rules under 26(a)(2) apply both to report-giving and nonreport-giving experts. So please don't think that you need not provide disclosures for an expert who is not required to provide a report. The disclosures requirements are different for such an expert but not nonexistent. So please comply with all of these deadlines.

I'll grant extensions of time but only for good cause shown. I'll scrutinize requests for existence of good cause. And you should also make any requests for an extension within the two days prior to the date sought to be extended. If you fail to do that, you should expect that I'll deny the request.

Good. So what can I do to help you resolve the case at this point?

MR. ZIFFER: Before we get to that, your Honor, I

wanted to identify one other scheduling issue.

THE COURT: Please do. Oh, is this the motion?

MR. ZIFFER: Yes.

THE COURT: Thank you. Yes. I saw that in your letter.

I understand that defendant seeks an extension to the 19th of July to accommodate preplanned vacations. Counsel for plaintiff?

MR. ZIFFER: Yes, no objection. That way the motions track at the same time, which is convenient for us.

THE COURT: Thank you.

I'd be happy to grant that request and will modify my order to permit defendant to submit its motion on the 19th of July. Good.

So what can I do to help the parties resolve the case early? Counsel for plaintiff?

MR. ZIFFER: Well, your Honor, I do think that decisions on the motions that are contemplated will be helpful, as defense counsel pointed out. I also think that a reference to the magistrate, getting a third party involved would be helpful as well. It may make sense to schedule us with the magistrate after those motions are decided. I do think that clarity on at least the two issues that we're talking about briefing would go a long way towards focusing the parties on the case. Frankly, I think the indemnity costs will be in, so

the slicing up of the defense costs will be less significant and there will be lots of ways for us to get through the full $[redacted], and once that has been confirmed, I think we'll be able to be productive in that regard, and also, when we establish coverage for, you know, half of the claims in the main action, that would be productive as well.

Can I confer with my colleague for one second, your Honor.

THE COURT: Please do.

MR. ZIFFER: Thank you, your Honor.

So in terms of timing, I think that we would be optimally situated after that time period, after the decisions.

THE COURT: Thank you.

Is it plaintiff's position that it would not be appropriate for me to enter a reference until after those motions have been decided?

MR. ZIFFER: I think that would be optimal.

THE COURT: Thank you.

Counsel for defendant, what's your view?

MR. NOVACK: Well, I guess we've reached our first disagreement, probably. My sense is that we need to brief these issues because it would be helpful to each of our respective clients, but I think it is likely, depending upon the outcome of the motion, we won't need a settlement conference, because it could dispose of a substantial portion

of the case one way or the other. So my thinking would be to brief it and, if the magistrate were available, perhaps have a conference while the motion was pending.

THE COURT: Thank you. Good.

Counsel for plaintiff, is that acceptable to you?

MR. ZIFFER: I think it will be unproductive. I think that -- we have a gap between [redacted] and [redacted] right now, and that's what we're going to have, although I think each side has strong views about where they are. That was reflected in the premotion conference. So I'm always happy to sit in a room, but I think if we're going to make an effort and take the magistrate's time, that that's not the optimal time.

THE COURT: Thank you.

Let me do this. I'll enter a reference to the assigned magistrate judge. There's benefit of having the reference in place in any event so that you can schedule something promptly. I'll let you discuss with the magistrate judge regarding whether or not you believe it would be fertile for you to take up the conference with him while the motion itself is pending. I ask no more than that you be willing to engage in a conversation about the prospect of settlement. My view of the mediation is not that you expect that you will necessarily agree but simply that you go in with an open mind, with an eye toward the possibility of agreeing, and I think that you can do that even after the motions have been briefed

and before the Court's decided. You'll have a clearer view of the merit of your adversary's arguments even without the benefit of my decision. So I'll encourage you to take up defendant's proposal and will enter a reference and let the magistrate judge know that that's my suggestion regarding timing of the proposed conference.

Anything else that we should discuss here? Counsel for plaintiff?

MR. ZIFFER: Not from the plaintiff.

THE COURT: Good. Thank you.

Counsel for defendant?

MR. NOVACK: No, your Honor.

THE COURT: Good. Thank you, all. This proceeding is adjourned.

THE DEPUTY CLERK: All rise.

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